

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO.471 OF 2005
CONNECTED WITH C.A.NO. 330 OF 2005

JIK Industries Limited. ..Petitioner Company.

Mr. Virag Tulzapurkar with Mr. M. Thakkar i/by
Rajesh Shah and Company for the petitioner.

Mr. C.J. Joy weith R.C. Master and M.M. Goswami for
Regional Director.

Mr.Amin Sethi for Vinayant Mehta & Veena V. Mehta.

Ms. Hemangi Prabhu, objectionist in person.

**CORAM: A.M. KHANWILKAR, J.
DATED: 16.9.2005.**

PC:

1. This petition is to sanction arrangement embodied in the Scheme of Arrangement under Section 391 of the Companies Act, 1956.

2. The company is engaged in manufacture of crystal glasses. The company had two manufacturing units which however, are not operating at present due to the fire company loss of chemicals, plant and equipments and collapse of wall of the plant. It is the case of the petitioner that on account of the said accident the company was badly affected in financial matters. The company incurred heavy losses and the entire net worth of the company has ended. In this back drop, company

has come forward with Scheme of Arrangement under the Companies Act. This court directed to convey meeting of the Shareholders, Unsecured Creditors, Non convertible Debenture Holder and Fixed Deposit Holders. Accordingly meeting was conveyed on 25.6.2005 which was presided by the Officer of this court Mr. A.P. Kothari acting as Official Assignee of this court. The Chairman appointed for the meeting has submitted his report to this court on 2.7.2005 which graphically describes the manner in which the meeting was held and participated by all concerned. From the summary of the report, it is seen that 41 Equity Shareholders attended the meeting. Out of 41, 40 voters representing value of Rs. 1,35,06,771 which is equivalent to 99.99% of the members who had voted at the meeting in favour of the scheme and only one vote representing value of Rs. 1000/- equivalent to 0.001% voted against the scheme. 138 Unsecured Creditors had attended the meeting out of whom 126 voted in favour of the resolution whose holding is stated to be in the sum of Rs. 6,13,63,359 which is equivalent 96.52%, whereas 11 Unsecured Creditors opposed the resolution whose holding is stated to be Rs. 22,08,855 equivalent to 3.48% of the persons voted in the meeting. In so far as Non Convertible Debenture Holders category is concerned in all 231 persons attended the meeting. Out of persons

voted in favour of the resolution having value Rs. 42,18,535/- equivalent to 98.25% from the persons voted in the meeting. Seven persons opposed the resolution whose claim is to the extent of Rs. 75,277/- equivalent to 1.75% of the persons voted. In so far as Fixed Deposit Holders category is concerned, 702 persons attended the meeting out of whom 661 voted in favour of the resolution constituting value of Rs.,67,15,161 equivalent to 88.32% present and voted. 40 persons opposed the resolution constituting claim of Rs.74,96,914 equivalent to 11.68%. One vote was declared as invalid in the value of Rs. 1,08,197/-. In other words the scheme of arrangement has been approved by all concerned with statutory majority. The scheme is therefore, placed for approval of this court. It is opposed by four persons before this court. Three of them constitute category of fixed deposit holders being Mr. Mehta, Mrs. Veena Mehta and Mr. Motiani. Mr. Motiani also constitutes category of non convertible debenture holder but has voted the resolution favourably in that capacity. He has however, opposed the resolution in the capacity as fixed deposit holder. The fourth person opposing this scheme is Mrs. Hemangi Prabhu who claims to be the unsecured creditor.

3. In so far as objection taken on behalf of the fixed

deposit holders is concerned, the sum and substance is that 146-fixed deposit holders had approached the Company Law Board in whose favour order has been passed on 28.1.2005 directing company to pay the claim amount. It is their claim that they should be treated as separate class of persons and not clubbed alongwith other fixed deposit holders. It is then argued that the meeting was not properly conducted. In the meeting antisocial elements attended the meeting and did not allow the creditors to address the meeting. The last objection is about the conversion of the bond in the equity shares is unrealistic in the sum of Rs.3/-, for which reason, the scheme proposed is unjust. In addition, it is asserted by Mr. Motiani on affidavit that during the pendency of this petition in this court he was threatened by the Chairman's son. He also asserts that threats were held out to him during the meeting by the Chairman in the company and bogus voting was done at the meeting. The counsel appearing for Vinaykant Mehta one of the fixed deposit holder also contends that the company has now produced approval given by the Bombay Stock Exchange and National Stock Exchange for the first time before this court and that the same was not brought to the notice of the members participating in the meeting. Besides, the directions given by the Company Law Board in Clause 9 of the order

has not been complied and the order of Company Law Board was suppressed from the concerned members who have voted in favour of the resolution.

4. I shall first deal with the objection taken on behalf of the fixed deposit holders. At the outset, it needs to be mentioned that no objection is received from any person in the category of Equity Shareholders or Non Convertible Debenture holders. So far as argument canvassed before this court on behalf of the fixed deposit holders that 146 persons who approached the Company Law Board in whose favour order came to be passed by the Company Law Board should be treated as separate class of persons is concerned, that objection is without any merit. I find substance in the argument canvassed on behalf of the company that even if the said persons are to be treated as decree holders they cannot be treated as separate class but by operation of law they would form the same class alongwith other fixed deposit holders. To support this legal position, reliance is placed on Section 390(c) of the Companies Act. Reliance is also placed on the decision of the Division Bench of Calcutta High Court in the case of **Haricharan Karanjali Vs. Ulipur Bank Ltd. reported in .I.R. (29) 1942 Calcutta 442** which considered similar contention. After considering the legal position and

the provisions of the Companies Act (1933). (S.153(3) of the Act, 1933) has observed that unsecured creditors who may have filed suit or obtained decree shall be deemed to be of the same class as other unsecured creditors. Applying the said principle to the claim of the fixed deposit holders it will have to be held that they cannot be treated as separate class of fixed deposit holders even though orders have been passed by the Company Law Board in their favour. I also find substance in the argument advanced on behalf of the company that the order of the Company Law Board proceeds on factual incorrect basis. It proceeds on the basis that there was nothing before the Company Law Board that reference made by the company to B.I.F.R. has been registered. The order of the Company Law Board came to be passed on 20.1.2005, when in fact from the record placed before this court, it is obvious that B.I.F.R. case came to be registered on 7.10.2004. Once B.I.F.R. proceedings were registered on 7.10.2004, no proceeding could have proceeded before the Company Law Board. Assuming that the order has been passed in favour of 146 fixed deposit holders who had approached the Company Law Board, the said order will be of no avail and cannot be the basis to treat the said persons as separate class of persons.

5. That takes me to the second objection canvassed on behalf of the fixed deposit holders that the meeting was attended by antisocial elements and the creditors were not allowed to address the meeting. This contention cannot be accepted. For, the report of the Chairman appointed for the meeting held on 25.6.2005 gives a graphic description of how the meeting was fairly conducted. As mentioned earlier, the report gives correct position as to what transpired in the meeting and who had attended the meeting. The Chairman had appointed independent persons to assist him in smooth functioning of the meeting. There is nothing on record to support the position that antisocial elements were allowed to attend the meeting. According to the report of the Chairman, all the persons were given opportunity to participate in the meeting. There is no reason to doubt the correctness of the report submitted by the Chairman appointed for the meeting. On this reasoning, the claim of the objectionist that all creditors were not allowed to address the meeting also cannot be accepted.

6. The other objection taken on behalf of the fixed deposit holders is that the conversion of bonds into equity shares at the price of Rs.3/- was un fair. I find no substance in this objection. On the other

hand, I am inclined to accept the argument advanced on behalf of the company which is supported from the materials on record that the price of equity shares has been determined as per the guide-lines of SEBI. The share price has also been approved by the Bombay Stock Exchange as well as National Stock Exchange. The approval documents are also placed on record at Exh. B-21 and 22. Viewed in this perspective, it is not possible to accept the grievance that the price of equity shares as determined is unjust and unreasonable in any manner. That objection is not substantiated by the objectors by producing material which would falsify the claim of the company that the price of shares determined is as per the guide-lines and/or is approved by the concerned Stock Exchange.

7. That, takes me to the objection taken of behalf of Mr. Motiani that threats were held out to him by the Chairman of the company and bogus voting was made. Both these contentions are rejected. As mentioned earlier, I see no reason to doubt the correctness of the report submitted by the Chairman who is an independent person and has conducted the meeting in most fair and acceptable manner. The Chairman had appointed two independent persons to assist him in conducting the meeting. There is no reason to accept

the bare words of Mr. Motiani. There is nothing on record to justify the grievance that threats were held out to him by the Chairman of the company in the course of the meeting or that bogus voting took place. The question of bogus voting does not arise as all possible care was taken by the Chairman in conducting the meeting.

8. It was lastly contended on behalf of Mr. Motiani that the Chairman's son had threatened him during the pendency of the proceeding in this court. Even that allegation does not commend to me. In the first place the company has filed affidavit of Mr. S.C. Gurav, Director denying the claim of Mr. Motiani. In any case, that episode cannot be the basis to disallow the scheme of arrangement which is placed for approval before this court which is otherwise just and proper. If Mr. Motiani is serious about the allegations made by him, he may pursue the matter in accordance with law as may be advised.

9. That takes me to the objection taken on behalf of Mrs. Prabhu. She claims that she has given legal advise and had appeared for the company in legal proceedings, for which she has submitted her running bills to the company from time to time. The company in

turn has paid amount to her on account. However, on 1.3.2005 the company was indebted to her in the sum of Rs.1,17,777/- for legal charges for handling numerous matters of the company, fees of counsels who were appointed on instructions of the company, court expenses, stationary etc. It is her case that although she is one of the unsecured creditor her name is not mentioned in the list of unsecured creditors . It is only after she made grievance before this court the company has denied its liability to pay any amount. Per contra, according to the company, the entire claim of Mrs. Prabhu has been settled. It is contended that as per Rule 85 of the Companies Act her claim will have to be adjudicated by the court and she should be given opportunity to establish her claim. The counsel for the company however, contends that neither Rule 56 or Rule 85 has any application. Rule 56 applies to matters pertaining to reduction of share capital, whereas, Rule 85 will apply to proposed compromise or arrangement for reduction of capital of the company. That is not the case in hand. For this reason, it is unnecessary for this court to go into the claim of Mr. Prabhu. Mrs. Prabhu has also relied on Rule 84 of the Companies Act; that her claim will have to be considered by this court before the scheme has is approved.

10. The counsel for the company fairly accepts that so far as the claim of Mrs. Prabhu is concerned, without going into the correctness of the said claim, the company's scheme of arrangement as presented before this court may be approved on condition that company will set apart specified amount which will cover the claim of Mrs. Prabhu, which amount can be made over to her after the court of competent jurisdiction adjudicates her claim and issue such directions to the company. I find substance in this submission.

11. Accordingly, so far as objection of Mrs. Prabhu is concerned, that can be taken care of by directing the company to set apart Rs.1,17,777/- and deposit the same forthwith in this court which will be made over to Mrs. Prabhu only after appropriate order is passed by the court of competent jurisdiction on adjudication of her claim.

12. The petition is therefore, made absolute in terms of prayer clause (a) and (b) on the above condition. The company shall forthwith deposit a sum of Rs.1,17,777/- referred to above in the suit account. In the event Mrs. Prabhu fails to institute, suit within six weeks from the date of deposit made by the

company, it will be open to the company to apply to this court for withdrawal of the said amount. If the suit is filed within the specified time, the amount to be transferred to the suit account and shall be subject to outcome of the said proceeding. It is made clear that the deposit made by the company under order of this court is without prejudice to the rights and contentions of the parties with regard to the merits of their claim.

(A.M. KHANWILKAR, J.)